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39 **UNITED STATES DISTRICT COURT**
40 **NORTHERN DISTRICT OF CALIFORNIA**
41 **SAN FRANCISCO DIVISION**

42 SHEET METAL WORKERS' NATIONAL
43 PENSION FUND and INTERNATIONAL
44 BROTHERHOOD OF TEAMSTERS
45 LOCAL NO. 710 PENSION FUND,
46 individually and as Lead Plaintiffs on behalf
47 of all others similarly situated, and

48 INTERNATIONAL UNION OF
49 OPERATING ENGINEERS PENSION
50 FUND OF EASTERN PENNSYLVANIA
51 AND DELAWARE, individually and as
52 Named Plaintiff, on behalf of all others
53 similarly situated,

54 Plaintiffs,

55 vs.

56 BAYER AKTIENGESELLSCHAFT, WERNER
57 BAUMANN, WERNER WENNING, LIAM
58 CONDON, JOHANNES DIETSCH, and
59 WOLFGANG NICKL,
60 Defendants.

61 Case No: 3:20-cv-04737-RS

62 **CLASS ACTION**

63 **STIPULATION AND
64 SCHEDULING ORDER**

65 Ctrm: 3 – 17th Floor
66 Judge: Richard Seeborg

1 Pursuant to Local Rules 6-2 and 16-2(e), the Parties respectfully request the following:

2 WHEREAS, the above-captioned case is currently pending before this Court;

3 WHEREAS, Court-Appointed Lead Plaintiffs Sheet Metal Workers' National Pension Fund
4 and International Brotherhood of Teamsters Local No. 710 Pension Fund ("Lead Plaintiffs"), along
5 with additional named plaintiff International Union of Operating Engineers Pension Fund of Eastern
6 Pennsylvania and Delaware (collectively, "Plaintiffs") filed an Amended Class Action Complaint on
7 January 19, 2021 (ECF No. 47);

8 WHEREAS, Defendant Bayer Aktiengesellschaft ("Bayer" or the "Company") and
9 Defendants Werner Baumann, Werner Wenning, Liam Condon, Johannes Dietsch, and Wolfgang
10 Nickl (together, the "Individual Defendants," and collectively with Bayer, the "Defendants") moved
11 to dismiss the Amended Class Action Complaint on March 22, 2021 (ECF No. 61);

12 WHEREAS, the Court denied Defendants' motion to dismiss on October 19, 2021, but held
13 that "unless and until Plaintiffs successfully amend the Complaint" certain "theories are foreclosed
14 as the case moves forward" (ECF No. 90);

15 WHEREAS, on December 17, 2021, Plaintiffs filed a motion for leave to file a Second
16 Amended Class Action Complaint (ECF No. 102) (the "Motion for Leave to Amend");

17 WHEREAS, Defendants do not intend to oppose the Motion for Leave to Amend, and have
18 consented to the filing of the Second Amended Class Action Complaint subject to a reservation of
19 their right to move for its dismissal;

20 WHEREAS, there is currently a hearing on the Motion for Leave to Amend scheduled for
21 January 20, 2022;

22 WHEREAS, Defendants intend to move to dismiss the Second Amended Class Action
23 Complaint;

24 WHEREAS, the full scope of discovery in this litigation cannot be determined until the Court
25 rules on Defendants' anticipated motion to dismiss, but the parties are currently scheduled to submit
26 a joint case management report addressing the discovery plan and schedule for this action by January
27 20, 2022, and to appear for an initial case management conference on January 27, 2022; and

28 WHEREAS, Plaintiffs conferred via email with Defendants and the parties mutually agreed
that as a matter of efficiency for both the parties and the Court, it would be beneficial to (1) adjourn

1 the hearing on the Motion for Leave to Amend; (2) temporarily adjourn and postpone the initial case
2 management conference and related deadlines until after the Court has ruled on Defendants' motion
3 to dismiss the Second Amended Class Action Complaint; and (3) set a briefing schedule for
4 Defendants' motion to dismiss the Second Amended Class Action Complaint.

5 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties,
6 that:

- 7 1. Defendants consent to the filing of the Second Amended Class Action Complaint,
8 while reserving their right to seek dismissal pursuant to Rules 9(b) and 12(b)(6) of the
9 Federal Rules of Civil Procedure, as well as the Private Securities Litigation Reform
10 Act of 1995. Plaintiffs shall file the Second Amended Class Action Complaint within
11 two (2) business days after the Court issues an order granting this stipulation.
- 12 2. The motion hearing currently scheduled for January 20, 2022 shall be adjourned as
13 moot.
- 14 3. Defendants shall answer or move to dismiss the Second Amended Class Action
15 Complaint no later than January 31, 2022.
- 16 4. If Defendants move to dismiss the Second Amended Class Action Complaint,
17 Plaintiffs shall file opposition papers no later than thirty (30) days after the filing of
18 Defendants' motion to dismiss.
- 19 5. Defendants' reply in support of any motion to dismiss the Second Amended Class
20 Action Complaint shall be filed no later than fourteen (14) days after the filing of
21 Plaintiffs' opposition to Defendants' motion to dismiss.
- 22 6. Subject to the Court's convenience and schedule, the initial case management
23 conference currently scheduled for January 27, 2022 shall be continued until thirty
24 (30) days after the Court has ruled on Defendants' motion to dismiss the Second
25 Amended Class Action Complaint.
- 26 7. Without limiting the Parties' ability to seek to lift the stay of discovery in accordance
27 with 15 U.S.C. § 78u-4(b)(3)(B), the Parties' obligations under subparts (a) and (f) of
28 Rule 26 of the Federal Rules of Civil Procedure, Rule 16-9 of the Civil Local Rules,
and Rule 3-5 of the ADR Local Rules shall currently be suspended until after the Court

1 has ruled on Defendants' motion to dismiss the Second Amended Class Action
2 Complaint.

3 IT IS SO STIPULATED.

4 Dated: December 29, 2021

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CERTIFICATE PURSUANT TO LOCAL RULE 5-1(i)(3)

I, Nicole Lavallee, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Nicole Lavallee
Nicole Lavallee

**ORDER GRANTING STIPULATION PURSUANT TO
STIPULATION, IT IS SO ORDERED.**

Dated: December 29, 2021


HONORABLE RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE